In the High Court of Punjab and Haryana, Chandigarh.

C.W.P.No.17119 of 2003

Date of Decision: 26.03.2007

Harcharan Singh.

…Petitioner.

Versus

Punjab School Education Board & Another.

…Respondents.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.V.K.Jindal, Advocate
for the petitioner.

Mr.R.C.Chatrath, Advocate
for the respondent.

JUDGMENT

M.M.KUMAR, J. (ORAL)

This petition filed under Article 226 of the Constitution prays for quashing order dated 6.6.2000 (Annexure P9) passed by the Punjab School Education Board imposing on the petitioner the punishment of dismissal from service who was working as Senior Assistant (Store Keeper). The aforementioned punishment has been imposed under Regulation 5(viii) read with Regulation 6 of Punjab School Education Board Employees (Punishment

and Appeal) Regulations, 1978. It has further been prayed that order dated 11.8.2003 (Annexure P12) passed by the Board on the appeal filed by the petitioner under Regulation 14 of the Regulations may also be quashed.

Brief facts of the case, necessary for disposal of the instant petition, are that Punjab State Education Board has been established under Section 3 of the Punjab School Education Board Act, 1969. The Board is a body corporate having perpetual succession and a common seal subject to the powers under the Act to acquire, sale or dispose of property both movable or immovable. It may by that name sue and be sued. The Board opened its Text Book Depot at Sangrur and under the accounting procedure for working of the Test Book Scheme, the Store Keeper has been made responsible for the upkeep of the property, maintenance, custody, receipt and issue of text books and for proper record. The petitioner had taken charge as Store Keeper on 7.8.1979. The Board constituted a Checking Party to check the store of the text books who conducted the checking from 3.2.1981 to 9.2.1981. It found shortage of text books and exercise books worth Rs.88,261.27 ps. and of admission forms worth Rs.3,955.50 ps. An F.I.R. At the instance of the Board was registered against the petitioner being FI.R. No.52 dated 12.2.1981 under Section 409 I.P.C. The petitioner was tried and on 30.1.1986, the Chief Judicial Magistrate held the petitioner guilty and imposed on him imprisonment of four years and a fine of Rs.5000/-. The appeal filed by the petitioner before the learned Sessions Judge, Sangrur, was dismissed on 17.11.1987 whereby upholding the punishment of sentence and fine. The petitioner filed revision petition which was decided on 20.8.1998 by this Court and the petitioner was acquitted by extending him benefit of doubt. It is appropriate to mention that after the conviction of the petitioner by the learned Chief Judicial Magistrate on 30.1.1986, he was dismissed from service vide order dated 17.4.1986 (Annexure P2). It is

appropriate to mention that although the Board could have conducted the departmental enquiry but in view of the fact that the petitioner was convicted by a criminal Court under Section 409 I.P.C. the respondent-Board felt satisfied by imposing the penalty of dismissal keeping in view the conduct of the petitioner which had led to his conviction on a criminal charge. After the acquittal of the petitioner by virtue of judgment dated 20.8.1998, he made representation to the Board for reinstatement. Eventually, on 7.9.1999 the order of his dismissal was withdrawn and right to hold the regular departmental enquiry was kept reserved (Annexure P3). A perusal of the order further shows that a decree against the petitioner amounting to Rs.1,04,500/- had been passed against the petitioner on 20.7.1987. It is further evident from the order dated 14.9.1999 (Annexure P4) that the petitioner did not deposit the aforementioned amount with the Board causing it huge financial loss. Accordingly, he was again placed under suspension vide order dated 14.9.1999 (Annexure P4). On 1.10.1999, a regular departmental enquiry was initiated against him and following five charges were framed:-

"1. As per the list enclosed Shri Harcharan Singh, Senior Assistant has committed embezzlement of text books/admission forms worth Rs.92,216.77, Sangrur Depot, while working as Store Keeper.

2. Shri Harcharan Singh, Senior Assistant has misutilised his position with malafide intention while doing all this.

3. Shri Harcharan Singh, Senior Assistant has committed big fraud after misappropriating the text books/admission forms of Rs.92,216.77.

4. Despite the decree passed by the Court for the recovery

of the embezzlement amount, Shri Harcharan Singh, Senior Assistant has not deposited the requisite amount in the office and by this way he has violated the orders passed by the Court.

5. Shri Harcharan Singh, Senior Assistant has acted against office discipline while misappropriating the books".

The Enquiry Officer in his report dated 14.2.2000 (Annexure P7) concluded that charge Nos.1, 2, 3 & 5 have not been proved and charge No.4 alone has been proved. The findings of the Enquiry Officer on charge No.4 are as under:-

"<u>Charge No.4</u>:

The D.E. has admitted that he knows about the decree of Rs.92,216.77 passed by the Court against him and he has not filed any appeal against this decree. He also stated that he is ready to deposit this amount. Simultaneously, he also stated that he has not received the copy from Court and the Court or the Board has not sent any notice to him for deposit of the aforesaid amount till date. This is most important fact. Neither any witness of the Board nor P.O. has produced any order from the Board or from the Court whereby the D.E. had been directed to deposit the amount within the fixed duration and for the violation of which the D.E. could be held guilty, however, Shri Bharat Bhushan, witness of the Board, Law Officer has mentioned in his statement that on 20.7.1987 Sub Judge, Sangrur passed order to recover Rs.92,216.77 along with 6% interest. MW-2 Shri Som Nath, Senior Manager Books has stated in his statement that the Court has passed decree against

D.E. for recovery of Rs.1,04,500/- and the D.E. filed appeal which was dismissed by the District Judge because Shri Harcharan Singh, Senior Assistant failed to deposit the amount of decree. For this reason, the Board also filed execution for the recovery of the aforesaid amount.

Keeping in view the aforesaid statement it becomes crystal clear that the D.E. has not deposited the requisite amount even after passing of the decree of Rs.1,04,500/- and dismissal of his appeal by Addl. District Judge which he should have done. D.E. has the orders regarding decree because on the basis of the orders regarding decree he filed appeal in the Court of District Judge. His version that he has not received the copy of the order, is not correct.

On the basis of the aforesaid facts, charge No.4 stands established against D.E."

On the basis of the report of the Enquiry Officer, a show cause notice was issued to the petitioner along with copy of the Enquiry Report wherein the Vice Chairman exercising the powers of the Chairman of the Board has expressed his agreement with the findings of the Enquiry Officer on charge No.4 and has provisionally proposed the major punishment of removal from service as per Regulations 5(viii) and 6 of the Regulations. The petitioner filed his reply and he was granted personal hearing. However, the Vice Chairman while exercising the powers of the Chairman passed the punishment of removal from service vide order dated 6.6.2000 (Annexure P9) by observing as under:-

"An enquiry officer was appointed to enquire into the charges levelled in the charge sheet. In the enquiry report

submitted by enquiry officer, after investigating the concerned record and recording the statements of witnesses, it was proved that during the tenure of Sh.Harcharan Singh as store-keeper at Sangrur Depot books/admission forms to the tune of Rs.92,216.77 was found short. *Despite passing the decree by the Session Court Sangrur regarding recovery of less amount in the store Sh.Harcharan Singh did not deposit the amount in Board's account. In this way other charges levelled in the charge sheet also stands proved indirectly.* On considering the enquiry report submitted by the enquiry officer. Sh.Harcharan Singh was issued a show cause notice vide office letter No.PSEB-4Astt-Estt-2000/1069 dated 28.3.2000 for dismissal from service due to confirmation of charges against him. Reply to the show cause notice submitted by Sh.Harcharan Singh was considered thoroughly and according to his demand a personal hearing was given. Sh.Harcharan Singh during his personal hearing or reply to show cause notice could not produce any solid proof which goes in his favour and for which the punishment suggested in show cause notice is condoned or reduced.

On considering this case from all aspects the punishment proposed in show cause notice under rule 5(viii) read with rule 6 of Punjab School Education Board Employees (Punishment and Appeal) Regulations 1978 is implemented against Sh.Harcharan Singh s/o Sh.Piara Singh, Senior Assistant (under suspension)".

An appeal was filed under Regulation 6 read with Regulations 13 & 14 of the Regulations before the Board (Annexure P10). Eventually, the

appeal was rejected by the Board on 11.8.2003 and the operative part of the order reads as under:-

> "Against this order, Shri Harcharan Singh filed appeal. The appeal was not decided soon, this resulted into filing C.W.P. No.7942 of 2003 by Harcharan Singh in Hon'ble High Court. The Hon'ble High Court on 22.5.2003 gave judgment that the appeal be decided within 3 months after affording him the opportunity. Keeping in view the judgment of the Hon'ble High Court, the appeal dated 18.7.2003 was placed during the meeting of the Board for its decision. It was decided that emergency meeting of the Board may be summoned and Shri Harcharan Singh be afforded opportunity to present his case and the appeal filed against punishment be decided. In view of the above decision, meeting of the Board was fixed on 11.8.2003. Shri Harcharan Singh was given full opportunity to produce his defence. Shri Harcharan Singh submitted facts in written/argument in his defence before Board while appearing in person. The facts were fully considered. He was afforded another opportunity to produce any defence in his favour. During the hearing, he gave example of some of the employees of the Board which were heard. However, all these cases are of separate nature which are not identical to his case. The points raised by him in appeal were deeply gone into. His plea that the order passed by Vice Chairman of the Board which have been issued by the Secretary of the Board whereby he has been removed from service are not in accordance with the Regulations. This is not correct. Because as per the provisions of the Act, Vice Chairman is competent to exercise the powers of the Chairman after the same are delegated to him and that also as per Section

> 15(2) of the Act, the Secretary of the Board being Principal Executive Officer is fully competent to enforce all decisions/orders of the Board. The plea raised by him in appeal that the word misconduct has been wrongly interpreted is not correct, because Shri Harcharan Singh, Senior Assistant at relevant time was working as Store Keeper. He was fully responsible of the books lying in the store. He is fully and directly responsible for the shortage of books amounting to Rs.92,216.77. This shows his irresponsibility towards the duties and carelessness. The Board has considered all aspects of this case and only thereafter Shri Harcharan Singh Ex-Senior Assistant is awarded punishment in departmental inquiry case and his appeal filed before the Board against the order is dismissed".

As per the averments made in the writ petition, the order of removal dated 6.6.2000 (Annexure P9) is passed on the premise that the petitioner had failed to comply with the Civil Court decree dated 20.7.1987 which could not be considered as misconduct especially when the petitioner has been praying to the respondent to deduct the decretal amount from his arrears of pay which were due to him from the Board. The Board had filed execution petition where the petitioner has taken the stand that arrears of his salary after his reinstatement were yet to be paid by the Board and the decretal amount could be deducted from the aforementioned arrears. Eventually, the decretal amount was deducted from the arrears of pay of the petitioner and remaining amount on account of monthly salary was paid to him. It has been emphasised that under Regulation 5(viii) of the Regulations, the penalty of removal from service could be imposed for good and sufficient reasons on an employee and the reason of non-payment of decretal amount

would not constitute good and sufficient reason as the decretal amount has eventually been deducted from the arrears of his salary which were due to the petitioner. The Punishment is stated to be arbitrary and violative of Articles 14 & 16 of the Constitution. It has also been asserted that the punishment in any case is disproportionate to the misconduct of non-payment of decretal amount and reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of **"Bhagat Ram v. State of Himachal Pradesh & Others" A.I.R. 1983 Supreme Court 454**.

In reply to the petition, the stand taken by the Board-respondent Nos.1 & 2 is that the petitioner was extended the benefit of doubt on 20.8.1998 in the judgment passed in the revision petition filed by him in this Court (Annexure P1). It has not been disputed that the decision with regard to the arrears of pay was to be taken only after the finalisation of the departmental enquiry which was initiated on 1.10.1999 (Annexure P5) after the petitioner was placed under suspension on 14.9.1999 (Annexure P4). The petitioner was dismissed from service on 6.6.2000 and his appeal was also dismissed by the Board on 11.8.2003 (Annexure P12). It is claimed that the petitioner has not been paid arrears of pay for the period w.e.f. 30.1.1986 (Annexure P2) the date of his dismissal till 20.8.1998 when he was acquitted by extending him the benefit of doubt and the principle of no work and no pay has been applied. On account of his acquittal he was reinstated in service on 7.9.1999 but placed under suspension again on 14.9.1999 in contemplation of enquiry which was initiated against him on 1.10.1999 (Annexure P5). It has been asserted that Civil Suit No.177 of 7.4.1982 for recovery of a sum of Rs.1,04,500/- was filed against the petitioner which was decreed in favour of the Board along with the interest at the rate of 6% per annum on 20.7.1987. The appeal of the petitioner against the aforementioned judgment and decree was dismissed by the learned Additional District Judge, Sangrur (Annexure

R1). The execution petition filed by the Board was still pending. It has been claimed that the petitioner did not join duty after one day leave on 2.2.1981 and thereafter remained absent from duty knowing fully well that stock taking/verification of the books/admission forms was to be carried out from 3.2.1981 to 9.2.1981.

It has further been accepted that the pay of the petitioner from the date of his reinstatement namely 20.8.1998 till 6.6.2000 (Annexure P9) the date of his termination was calculated to be Rs.1,13,856/- which was adjusted against the amount to be recovered from the petitioner amounting to Rs.1,82,455.57 ps. In other words, still a balance of Rs.68,599.57 ps. was recoverable from the petitioner on the basis of judgment and decree passed in favour of the Board and the execution proceedings were still pending. It has also been accepted that the petitioner himself submitted to deduct the arrears of decretal amount from the arrears of his salary as per details given in Annexure P6 which included the provident fund and arrears of pay. It is also claimed that the Enquiry Officer has found the petitioner guilty of indiscipline and carelessness while on duty and that the recovery proceedings had been initiated by the Board by filing execution applications. The Board has categorically submitted that the facts of the various cases, on which reliance has been placed by the petitioner in para 14 of the writ petition, are entirely different than the case of the petitioner.

Mr.V.K.Jindal, learned counsel for the petitioner has argued that the petitioner has been found guilty of one charge alone by the Enquiry Officer as per his Enquiry Report and no other charge could be proved against him in the departmental enquiry. He has further submitted that disobeying the decree of a Civil Court for the recovery of dues of the Board would not constitute a misconduct and it is not good and sufficient reason for imposing the punishment of removal from service within the meaning of

Regulation 5(viii) of the Regulations. Learned counsel has maintained that the petitioner had repeatedly told the respondent-Board that the decretal amount in pursuance to the decree dated 20.7.1987 be deducted from the arrears due to him and in that regard he has drawn our attention towards reply to allegation No.4 filed by the petitioner to the charge sheet dated 1.10.1999 (Annexure P6) and there was no question of depositing any money with the Board. Learned counsel has pointed out that there was no determination of the amount due to the petitioner at that stage so as to conclude against the petitioner that there was any shortage of amount to meet the decretal amount. He has further submitted that the order of punishment dated 6.6.2000 (Annexure P9) suffers from numerous illegalities because it has been concluded by the Punishing Authority that "other charges levelled against the petitioner in charge sheet also stand proved indirectly". Mr.Jindal has emphasised that in the absence of dissent having been recorded by the Punishing Authority with the findings recorded by the Enquiry Officer and in the absence of opportunity of hearing such finding could not have been recorded at the back of the petitioner which vitiates the impugned order. In support of his submission, learned counsel has placed reliance on judgments of Hon'ble the Supreme Court in the case of **"Union of India & Others v. J.Ahmed" A.I.R. 1979 Supreme Court 1022** and argued that mere non compliance or partial compliance of the decree of the Civil Court would not constitute misconduct so as to empower the Board to implicit extreme punishment of removal from service especially when execution proceedings had been initiated. He has also placed reliance on another judgment of Hon'ble the Supreme Court in the case of **"Kailash Nath Gupta v. Enquiry Officer, Allahabad Bank & Others" 2003(2) Service Cases Today 1018** and argued that even if loss had been caused to the Board on account of

negligence then it would not result into extreme punishment of removal from service.

Mr.R.C.Chatrath, learned counsel for the Board has submitted that apart from charge No.4, the Enquiry Officer has also found the petitioner guilty of charge No.5 to the extent that the petitioner had admitted shortage in stock being in violation of discipline or carelessness while on duty. He has drawn our attention to the findings on charge No.5 in the Enquiry Report submitted by the Enquiry Officer and the same reads as under:-

> "D.E. in his statement has admitted that the shortage in the stock is violation of the discipline or carelessness while on duty. To this extent charge No.5 is established, however, the charge of misappropriation of the books is not proved".

Mr.Chatrath, learned counsel for the Board has also argued that once the petitioner has been found guilty of shortage in stock in violation of discipline and also accepted carelessness while on duty, then the finding recorded by the Punishing Authority that indirectly he is liable for misappropriation has to be accepted. Learned counsel has insisted that the question of proportionable punishment cannot be raised by the petitioner once the findings are found to be based on the evidence and are not open to challenge for want of compliance with principles of natural justice.

We have perused the record with able assistance of learned counsel for the parties and have bestowed our concentrated consideration on the submissions made by them. Accordingly, we are of the view that the order dated 6.6.2000 (Annexure P9) suffers from legal infirmity inasmuch as the Punishing Authority has recorded finding that despite passing of the decree by the Civil Court for recovery of amount in lieu of the shortage in stock, the petitioner failed to deposit the amount with the Board and that other charges

levelled in the charge sheet also stood proved indirectly. It could not be disputed on behalf of the Board that no Show Cause Notice for disagreeing with the findings of the Enquiry Officer on charge Nos.1, 2, 3 & 5 was given after thorough discussions of the evidence pointing to the guilt of the petitioner which could have resulted into recording the finding of guilt against him. It is well settled principle of law that if the Punishing Authority is to disagree with the Enquiry Officer then it is incumbent upon him to issue a Show Cause Notice regarding his dissent and then after considering his reply proceed to record findings. In that regard, reliance may be placed on judgments of Hon'ble the Supreme Court in the cases of **"Union of India v. H.C.Goel" A.I.R. 1964 Supreme Court 364**, **"High Court of Judicature at Bombay v. Shashikant S.Patil & Another" (2000)1 Supreme Court Cases 416**, **"Ranjit Singh v. Union of India & Others" (2006)4 Supreme Court Cases 153**, **"Lav Nigam v. Chairman & M.D., I.T.I. Ltd. & Another" (2006)9 Supreme Court Cases 440**.

It is well settled that once the principle of natural justice has been violated then the Courts are within their rights to tinker with the quantum of punishment by evoking the theory of proportionate punishment. In the present case, the charge of misappropriation has not been proved either in the criminal proceedings or in the departmental enquiry. In that regard, reliance may be placed on a Constitution Bench judgment of Hon'ble the Supreme Court in the case of **"Rameshwar Prasad & Others (VI) v. Union of India & Others" (2006)2 Supreme Court Cases 1** wherein summing up the Wednesbury principle, their Lordships of Hon'ble the Supreme Court have observed as under:-

> "The *Wednesbury* principle is misunderstood to mean that any administrative decision which is regarded by the Court to

be unreasonable must be struck down. The correct understanding of the *Wednesbury* principle is that a decision will be said to be unreasonable in the *Wednesbury* sense i.e. (*i*) it is based on wholly irrelevant material or wholly irrelevant consideration, (*ii*) it has ignored a very relevant material which it should have taken into consideration, or (*iii*) it is so absurd that no sensible person could ever have reached it".

In the present case, the Enquiry Officer has jumped to the conclusion that other charges against the petitioner have also been proved merely because the petitioner has failed to comply with the decree of the Civil Court by not making payment of decretal amount. It has come on record that apart from charge No.4 and part of charge No.5 admitting violation of discipline or carelessness while on duty no other charge has been proved. The view taken by the Punishing Authority is so absurd and based on irrelevant material and consideration that no reasonable person would take such a decision. It is in that sense that Wednesbury principle would be attracted to the facts of the present case and deserves to be applied inasmuch as the decision of the Disciplinary Authority to impose extreme punishment of removal from service cannot be accepted. We are further of the view that after the acquittal of the petitioner by a Criminal Court freeing him from any charge of misappropriation the same could not be resurrected by the Disciplinary Authority to impose an extreme punishment on the petitioner. It has come on record that the petitioner was acquitted albeit extending him the benefit of doubt yet he could not be found guilty of charge of misappropriation. So this is a simple case of recovery in pursuance to the decree passed by the Civil Court and in that regard the stand of the petitioner throughout has been that the decretal amount be deducted from the arrears due to him from the Board on account of his reinstatement which were to be

worked out on account of his reinstatement. Eventually, the arrears were calculated at the discretion of the Board and it was found that the petitioner is yet to make payment of balance amount of Rs.68,599.57 ps. At the time when the petitioner filed his reply to the charge sheet dated 1.10.1999 he was not paid the arrears of his salary and other dues because it was decided by the Board while initiating enquiry, as is evident from para 2 of the order dated 7.9.1999 (Annexure P3). It would be unfair and unjust for the Board to make a claim of its due in lieu of the decree and its denial to adjust the dues of the petitioner on account of arrears of his salary or other benefits including provident fund etc. Therefore, once the Board is in execution of the decree and there were dues of the petitioner payable by it then it is not possible to conclude that the petitioner committed such a misconduct so as to attract the extreme punishment of removal from service even if he had admitted shortage in stock as an act in violation of discipline or his carelessness while on duty. Therefore, it cannot be held that the petitioner has been guilty of misconduct on account of non-payment of decretal amount. Accordingly, the punishment of removal from service is wholly unwarranted and disproportionate to the charge proved namely that the shortage of stock was act of indiscipline and carelessness of the petitioner while discharging duty.

In view of the above, we quashed the impugned order dated 6.6.2000 (Annexure P9) removing the petitioner from service as also the order passed by the Appellate Authority dated 11.8.2003 (Annexure P12). Accordingly, the petitioner is reinstated in service with all consequential benefits. However, in the facts and circumstances of the case, we are not inclined to remand the case back for fresh decision by the Punishing Authority as the misconduct alleged to have been committed was more than 26 years ago. Accordingly, we convert the punishment into stoppage of two annual grade increments with cumulative effect. The arrears of salary of the

petitioner shall be worked out in accordance with law and he shall be afforded opportunity of hearing in respect of his salary for the period he remained under suspension. The needful shall be done within a period of three months from the date a certified copy of the order is received by the respondent-Board.

The writ petition stands disposed of in above terms.

(M.M.KUMAR)
Judge

26.03.2007
dkb

(RAJESH BINDAL)
Judge